

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

NCS MULTISTAGE INC.,
NCS MULTISTAGE, LLC,

Plaintiffs,

v.

NINE ENERGY SERVICE, INC.,

Defendant.

CIVIL ACTION NO. 6:20-CV-00277-ADA

JURY TRIAL DEMANDED

**DEFENDANT NINE ENERGY SERVICE, INC.'S
THIRD RULE 50(A) MOTION FOR JUDGMENT AS A MATTER OF LAW**

Defendant Nine Energy Service, Inc. (“Nine”) hereby submits this motion for judgment as a matter of law under Federal Rule of Procedure 50(a). Claims 28 and 29 of the U.S. Patent No. 10,465,445 (the “445 Patent”) are anticipated by the TCO TDP-PO Plug. A prior art reference anticipates a patent’s claim under 35 U.S.C. § 102(b) if the prior art “discloses each and every element of the claimed invention arranged or combined in the same way as the claim.” *Monsanto Tech. LLC v. E.I. DuPont de Nemours & Co.*, 878 F.3d 1336, 1342-43 (Fed. Cir. 2018).

The TCO TDP-PO Plug discloses each of the elements of Claims 28 and 29. Dr. Meehan testified the TCO TDP-PO Plug includes the limitations of claims 28 and 29. Rough TR 635:16-636:29. Dr. Meehan understood and explained that the TCO TDP-PO tool is configured for casing string, and Dr. Meehan has personal experience using casing smaller than 4.5 inches. Rough TR 609:6-25; 613:15-19. Dr. Rodgers disagrees that the TCO TDP-PO tool was configured for casing string because of the size of the tool, but nothing in this court’s construction of casing string requires a minimum size for the tool to be configured for casing. Rough TR 777:7-12; 779:14-19.

The patent examiner was not aware of the TCO TDP-PO Plug at the time the '445 Patent was issued. Rough TR 605:18-25. Accordingly, Nine has established that Claims 28 and 29 are anticipated as a matter of law.

Dated: January 21, 2022

Respectfully submitted,

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***Attorneys for Defendant Nine Energy
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CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of January 2022, a true and correct copy of the foregoing document was served on all counsel of record via the Court's CM/ECF system.

/s/ Hilary L. Preston

Hilary L. Preston